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Tan Sri Norian Mai & Ors v Chua Tian Chang & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01–440–10 OF 2012
ABDUL WAHAB PATAIL, ROHANA YUSUF AND UMI KALTHUM JJCA
11 MAY 2015

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Tort — False imprisonment — Unlawful arrest and detention under Internal Security Act 1960 — Inspector-General of Police issued press statement that respondents were arrested and detained for involvement in militant activities prejudicial to national security — At trial in suit by respondents for damages appellants' witnesses admitted interrogation of respondents did not concern national security nor was there evidence of their involvement in militant activities — Whether damages awarded by trial court for defamation and for false imprisonment adequate — Whether appellants could rely on qualified privilege to escape liability for making reckless and untrue press statement

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The day after the first, second and third respondents were arrested by police under s 73(1) of the Internal Security Act 1960 ('the ISA'), the first appellant, as the then chief of police, issued a press statement, which was published in several major newspapers, that the arrests and detention of the three persons were related to their involvement in militant activities prejudicial to national security. It was announced that several other similar arrests would follow and about 16 days later, the fourth and fifth respondents were also arrested and detained under the same section of the ISA and news of those arrests were also carried in several local dailies. The second appellant subsequently issued a detention order against the five respondents (hereafter called 'the respondents') pursuant to s 8 of the ISA. Following their release from detention two years later, the respondents sued the appellants (the third appellant for being vicariously liable as employer of the first and second appellants) for general, aggravated and exemplary damages for false/unlawful arrest and detention and for defamation. The appellants' defence was that the arrest and detention complied with the law and that the press statement made in connection with the arrests was not defamatory; that even if it was, the appellants were not liable on the grounds of justification and qualified privilege. At the end of the trial, the High Court awarded each of the respondents general damages for false imprisonment in the sum of RM15,000 per day for each day they were in detention and RM30,000 each as aggravated damages for false imprisonment. With the exception of the fourth respondent, the other respondents were awarded RM100,000 in damages for defamation. The appellants' instant appeal was against the trial court's decision. The respondents also appealed

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contending that the damages awarded for defamation was inadequate. At the appeal, the appellants abandoned the defence of justification and contended that qualified privilege applied to the press statement which was made without malice.

Held, dismissing both the appellants' appeal against liability for defamation and the respondents' appeal against the quantum of damages awarded for defamation and reducing the damages awarded for false imprisonment to RM10,000 per day:

(1) The evidence was unchallenged that the respondents were not questioned or required to explain their activities purported to be prejudicial to the security of Malaysia. There was no explanation in evidence as to why they did not do so. The appellants' witnesses, DW1, DW2, DW3 and DW4 did not say, giving reasons, that they were not able to disclose the evidence they found. On the contrary, they admitted they did not find anything to link the respondents to the militant activities and that the interrogations had nothing to do with national security. Considering the press statement together with the admissions of DW1, DW2, DW3 and DW4, one could conclude the press statement was made to justify the arrests and detention without there being evidence of the respondents' allegedly subversive activities. Strictly, the press conference was not an occasion of qualified privilege, but even if it was one, since the press statement was made without basis and recklessly, the protection afforded by qualified privilege was lost (see paras 38 and 47).

(2) The press statement asserted that the arrests and detention of the respondents was made upon information obtained. That the information was obtained by the Bahagian Risikan and supplied to the first appellant was not a defence he could rely on to show lack of malice. The explanation provided by the press statement meant there was already some evidence before the respondents were arrested and detained. The admissions of DW1, DW2, DW3 and DW4, however, showed the prepared press statement was incorrect and untrue when it gave the inference there was some evidence against the respondents of being involved in activities prejudicial to national security when they were arrested and detained for further enquiries. The press statement, issued to assure the public that s 73 of the ISA was not being abused, was in the circumstances made recklessly by the first appellant (see para 39).

(3) There was not such an error in the trial judge's exercise of discretion in making the award for damages for defamation as to warrant appellate intervention. In the absence of evidence of actual malice on the part of the first appellant, the recklessness in this case was a mistake made in difficult circumstances, resulting from public officers succumbing to

using powers when it was not justified. As much as the court appreciated the injury suffered by the respondents, it had to be balanced against the interests of the nation and its citizens whose interests the appellants represented. If the appellants' purpose was to act, to take risks and make sacrifices, if necessary, for the people, it would be odd if the citizens now indirectly had to pay the appellants' substantial damages for defamation. More often than not in such circumstances, the sacrifices, where warranted, and the vindication of a judgment were more valuable than any purely monetary award (see paras 52–54).

(4) As the respondents were arrested for their political activities and not for the announced reason that they were involved in activities prejudicial to national security, their arrest and detention was a much more serious assault on personal liberty and for that reason an award for false imprisonment in this case had to be substantially more than the RM1,000 per day awarded by this court in *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah* [2014] 7 CLJ 533. The award of general damages was reduced from RM15,000 per day to RM10,000 per day (see paras 65–66).

[Bahasa Malaysia summary

Sehari selepas responden pertama, kedua dan ketiga ditangkap oleh polis di bawah s 73(3) Akta Keselamatan Dalam Negeri 1960 ('AKDN'), perayu pertama, sebagai mantan ketua polis ketika itu, telah mengeluarkan kenyataan akhbar, yang telah dikeluarkan dalam beberapa akhbar utama, bahawa tangkapan dan penahanan ketiga-tiga orang itu adalah berkaitan dengan penglibatan mereka dalam kegiatan militan yang memudaratkan keselamatan negara. Ia diumumkan bahawa beberapa tangkapan sama yang lain akan dibuat dan lebih kurang 16 hari kemudian, responden-responden keempat dan kelima juga telah ditangkap dan ditahan di bawah seksyen AKDN yang sama dan berita tentang tangkapan-tangkapan tersebut telah disebarkan dalam beberapa akhbar harian. Perayu kedua kemudian telah mengeluarkan satu perintah penahanan terhadap lima responden ('responden tersebut') menurut s 8 AKDN. pelepasan mereka daripada tahanan dua tahun kemudian, responden-responden telah menyaman perayu-perayu (perayu ketiga kerana bertanggungjawab secara vikarius sebagai majikan kepada perayu-perayu pertama dan kedua) untuk ganti rugi am, tambahan dan teladan bagi tangkapan dan penahanan serta fitnah. Pembelaan perayu-perayu adalah tangkapan dan penahanan itu mematuhi undang-undang dan kenyataan akhbar yang dibuat berkaitan tangkapan itu bukan berunsur fitnah; bahawa meskipun jika ia begitu, perayu-perayu tidak bertanggungjawab atas alasan justifikasi dan perlindungan bersyarat. Di akhir perbicaraan, Mahkamah Tinggi telah mengawardkan ganti rugi am untuk pemenjaraan palsu berjumlah RM15,000 sehari untuk setiap hari mereka dalam tahanan dan RM30,000 masing-masing sebagai ganti rugi tambahan kerana pemenjaraan palsu.

Dengan mengecualikan responden keempat, responden-responden lain telah diawardkan RM100,000 sebagai ganti rugi untuk fitnah. Rayuan perayu-perayu ini adalah terhadap keputusan mahkamah perbicaraan. Responden-responden juga telah merayu dengan berhujah bahawa ganti rugi yang diawardkan untuk fitnah adalah tidak mencukupi. Semasa rayuan, perayu-perayu tidak menggunakan pembelaan justifikasi dan berhujah bahawa perlindungan bersyarat terpakai kepada kenyataan akhbar yang telah dibuat tanpa niat jahat.

Diputuskan, menolak kedua-dua rayuan perayu-perayu terhadap liabiliti untuk fitnah dan rayuan responden-responden terhadap kuantum ganti rugi yang diawardkan untuk fitnah dan mengurangkan ganti rugi yang diawardkan untuk pemenjaraan palsu kepada RM10,000 sehari:

(1) Keterangan yang tidak dicabar yang mana responden-responden tidak disoal atau dikehendaki menjelaskan kegiatan mereka dianggap membahayakan keselamatan Malaysia. Tiada penjelasan dalam keterangan tentang kenapa mereka tidak berbuat demikian. Saksi-saksi perayu-perayu DW1, DW2, DW3 dan DW4 tidak mengatakan, dengan memberi sebab, yang mereka tidak dapat memberitahu keterangan yang ditemui oleh mereka. Sebaliknya, mereka mengakui yang mereka tidak menemui apa-apa untuk mengaitkan responden-responden dengan kegiatan militan dan bahawa soal siasat itu tiada kaitan dengan keselamatan negara. Dengan mengambil kira kenyataan akhbar bersama pengakuan-pengakuan DW1, DW2, DW3 dan DW4, ia boleh diputuskan yang kenyataan akhbar itu telah dibuat untuk mewajarkan tangkapan dan penahanan tanpa perlu ada keterangan tentang dakwaan kegiatan subversif responden-responden. Secara tegasnya, kenyataan akhbar itu tidak memerlukan perlindungan bersyarat, tetapi jikapun ianya begitu, oleh kerana kenyataan akhbar itu dibuat tanpa asas dan secara melulu, perlindungan yang diberikan oleh perlindungan bersyarat itu hilang (lihat perenggan 38 dan 47).

(2) Kenyataan akhbar itu menegaskan bahawa tangkapan dan penahanan responden-responden adalah berdasarkan maklumat yang diperolehi. Bahawa maklumat yang diperolehi oleh Bahagian Risikan dan diberikan kepada perayu pertama bukan satu pembelaan yang boleh digunakan olehnya untuk menunjukkan tiada niat jahat. Penjelasan yang diberikan oleh kenyataan itu bermaksud telahpun ada keterangan sebelum responden-responden ditangkap dan ditahan. Pengakuan DW1, DW2, DW3 dan DW4, bagaimanapun, menunjukkan kenyataan akhbar yang disediakan adalah tidak betul dan tidak benar apabila ia memberi inferens yang terdapat keterangan terhadap responden-responden terlibat dalam kegiatan yang mengancam keselamatan negara apabila mereka ditangkap dan ditahan untuk siasatan lanjut. Kenyataan akhbar itu, yang disiarkan untuk menjamin kepada pihak awam bahawa s 73

AKDN tidak disalahgunakan, adalah dalam keadaan yang dibuat secara melulu oleh perayu pertama (lihat perenggan 39).

(3) Tiada apa-apa kekhilafan dalam pelaksanaan budi bicara hakim perbicaraan membuat award untuk ganti rugi bagi fitnah yang mewajarkan campur tangan pihak mahkamah rayuan. Dengan ketiadaan keterangan niat jahat di pihak perayu pertama, sikap melulu dalam kes ini merupakan kesilapan yang dibuat dalam keadaan sukar, yang disebabkan oleh pegawai awam yang terpaksa menggunakan kuasa apabila ia tidak wajar. Sebanyak mana pun mahkamah memahami kecederaan yang dialami oleh responden-responden, ia perlu diimbangi dengan kepentingan negara dan rakyatnya yang mana kepentingan perayu-perayu diwakili. Jika tujuan perayu-perayu adalah untuk bertindak, mengambil risiko dan membuat pengorbanan, jika perlu, untuk orang, maka ia suatu yang pelik jika rakyat kini secara tidak langsung perlu membayar ganti rugi yang besar untuk fitnah. Lebih-lebih lagi dalam keadaan sebegini, pengorbanan itu, diwajarkan, dan keputusan suatu penghakiman lebih bernilai daripada award dalam bentuk wang semata-mata (lihat perenggan 52–54).

(4) Oleh kerana responden-responden telah ditangkap kerana kegiatan politik mereka dan bukan kerana mengumumkan sebab mereka terlibat dalam kegiatan yang membahayakan keselamatan negara, tangkapan dan penahanan mereka merupakan serangan lebih serius ke atas kebebasan peribadi dan kerana sebab itu award untuk pemenjaraan palsu dalam kes ini hendaklah lebih banyak daripada RM1,000 sehari yang diawardkan oleh mahkamah ini dalam kes *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah* [2014] 7 CLJ 533. Award untuk ganti rugi am dikurangkan daripada RM15,000 sehari kepada RM10,000 sehari (lihat perenggan 65–66).]]]

Notes

For cases on false imprisonment in general, see 12(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 844–867.

Cases referred to

Bradford Corpn v Pickles [1895] AC 587, HL (refd)
Council of Civil Service Unions and others v Minister for the Civil Service [1984] 3 All ER 935, HL (refd)
Dato' Seri Syed Hamid bin Syed Jaafar Albar (Menteri Dalam Negeri) v SIS Forum (Malaysia) [2012] 6 MLJ 340; [2012] 9 CLJ 297, CA (refd)
Dawkins v Lord F Paulet (1869) LR 5 QB 94, QBD (refd)
Horrocks v Lowe [1975] AC 135, HL (refd)
Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh [1997] 1 MLJ 789; [1997] 2 CLJ 11, SC (refd)
Loutchansky v Times Newspapers Ltd and others (Nos 2-5) [2001] EWCA Civ

1805; [2002] QB 783, CA (refd)
Mohamad Ezam bin Mohd Noor v Ketua Polis Negara & Other Appeals [2002] 4 MLJ 449; [2002] 4 CLJ 309, FC (refd)
Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah [2014] 7 CLJ 533, CA (refd)
PP v Ooi Kee Saik & Ors [1971] 2 MLJ 108 (refd)
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 CLJ 147, FC (refd)
Reynolds v Times Newspapers Ltd and others [2001] 2 AC 127, HL (refd)
Secretary of State for the Home Department v Rehman [2001] 1 All ER 122, HL (refd)
Thompson v Metropolitan Police Comr [1998] QB 498, CA (refd)
Zamora, The [1916] 2 AC 77, PC (refd)

Legislation referred to

Criminal Procedure Code
Internal Security Act 1980 ss 8, 73, 73(1)

Appeal from: Civil Suit No S1-21–39 of 2004 (High Court, Kuala Lumpur)

Kamal Azira bin Hassan (Normastura bt Ayub and Shaiful Nizam bin Shahrin with him) (Senior Federal Counsel, Attorney General's Chambers) for the appellants.
Ranjit Singh (Razlan Hadri Zulkifli, Ho Kok Yew, Jennifer Wah Pei Lui and Che Beng Han Randy with him) (Owee & Ho) for the respondents.

Abdul Wahab Patail JCA:

[1] The first to the eighth plaintiffs, Mohamad Ezam bin Mohd Nor, Chua Tian Chang, Hishamuddin bin Rais, Saari bin Sungib, Badaruddin bin Ismail, Badrulamin bin Bahron, Abdul Ghani bin Haroon and Gobalakrishnan a/l Nagappan commenced an action in the tort of false/unlawful arrest and detention, and the tort of defamation for a claim for general, aggravated and exemplary damages against the appellants. At the trial before the High Court, the first, seventh and eighth plaintiffs discontinued their action. The second, third, fourth, fifth and sixth plaintiffs remained. They are hereinafter referred to collectively as 'the plaintiffs'.

[2] The defences relied upon by the first, second and the third defendants Tan Sri Norian Mai, Menteri Hal Ehwal Dalam Negeri and Kerajaan Malaysia (collectively 'the defendants') were:

(a) at all material times the arrest and detention were in accordance with s 73(1) and s 8 of the Internal Security Act 1980 ('the ISA'); and

(b) the press statements were not defamatory; and even if they were, the defendants relied upon the defence of justification and qualified privilege.

[3] At the end of the trial, the High Court entered judgment for the plaintiffs and awarded:

(a) to the second, third, fourth, fifth and sixth plaintiffs general damages for false imprisonment in the sum of RM15,000 each per day for each day detained;

(b) to the second, third, fourth, fifth and sixth plaintiffs aggravated damages for false imprisonment in the sum of RM30,000 each;

(c) to the second, third, fourth and sixth plaintiffs damages for defamation in the sum of RM100,000 (RM60,000 general and RM40,000 aggravated and exemplary damages); and

(d) costs RM200,000.

[4] The defendants appealed against the decision of the High Court made on 2 October 2012 allowing the claim by the second, third, fourth, fifth and sixth plaintiffs with costs.

[5] The plaintiffs appealed against the award of damages for defamation as inadequate.

[6] For convenience, we refer to the appellants and the respondents as 'the defendants' and 'the plaintiffs' respectively.

THE APPEAL

[7] At the commencement of the hearing of the appeal, this court was informed by the defendants that their appeal would proceed only on:

(a) liability for defamation; and

(b) quantum for general and aggravated damages for unlawful arrest and detention.

[8] In respect of liability for defamation, this court was informed that the defendants would not pursue the defence of justification but confine their submissions to the following, that:

(a) qualified privilege applied to the press statement, and

(b) there was no malice as the first defendant released a statement from the Cawangan Risikan & Sumber-Sumber Lain.

A THE BRIEF FACTS

[9] The second, third and fourth plaintiffs were arrested on 10 April 2001 under s 73(1) of the ISA. The very next day, on 11 April 2001, a press conference was held, where a press statement ('the press statement') was issued to the press, asserting that their arrest and detention were related to militant activities. The arrests were reported in the newspapers on 12 April 2001.

[10] The news was carried on the *NST*, *Berita Harian*, *Utusan Malaysia* and *Harian Metro* on 12 April 2001, and reported that several other related arrests were forthcoming.

[11] The fifth and sixth plaintiffs were arrested and detained on 26 April 2001 and 20 April 2001 under the same section of the ISA. Their arrests were reported in the *Malay Mail* on 20 April 2001, *Berita Harian* on 21 April 2001 and the *NST* referred to the earlier arrests on 10 April 2001.

[12] Pursuant to the powers under s 8 of the ISA, the Minister issued a detention order against the second, third, fourth, fifth and sixth plaintiffs.

[13] The second, third, fourth, fifth and sixth plaintiffs were released on the 1 June 2003, 5 June 2003 and 12 June 2003 respectively.

THE PRESS STATEMENT

[14] We examined the press statement issued by the first defendant. We had added our translation thereto:

> KENYATAAN AKHBAR MENGENAI PENANGKAPAN DI BAWAH AKTA KESELAMATAN DALAM NEGERI 1960 ('AKDN')
>
> *[Press Statement in relation to arrests under the Internal Security Act 1960 ('ISA')]*
>
> Pada 10 dan 11 April 2001, pihak polis telah menangkap dan menahan 7 orang aktivis reformasi di bawah Sek 73(1) Akta Keselamatan Dalam Negeri 1960 ('AKDN'). Mereka yang ditangkap dan ditahan adalah:
>
> (1) Mohamad Ezam bin Mohd Nor – 34 tahun;
>
> (2) Chua Tian Chang – 37 tahun;
>
> (3) Nisamuddin bin Md Rais atau Hishamuddin Rais – 50 tahun;
>
> (4) Saari bin Singib – 43 tahun;
>
> (5) Gobalakrishnan a/l Nagapan – 41 tahun;
>
> (6) Raja Petra Raja Kamarudin – 49 tahun; dan
>
> (7) Abdul Ghani bin Haroon – 35 tahun

[On the 10th and 11th April 2001 the police had arrested and detained 7 persons named, (being the 1st, 2nd, 3rd, 4th, 7th and 8th plaintiffs herein) and one Raja Petra Raja Kamarudin under the ISA.]

2. Tangkapan dan penahanan ini dilakukan kerana terdapat maklumat-maklumat mengenai penglibatan mereka dalam kegiatan yang boleh memudaratkan keselamatan negara. Pihak polis perlu menjalankan siasatan yang rapi atas maklumat-maklumat tersebut. Kegiatan reformasi yang bermula pada bulan SEP 1998 merancang untuk menggulingkan kerajaan melalui demonstrasi jalanan secara besar-besaran dan bersiap-sedia untuk bertindak secara militan dengan mengambil beberapa pendekatan seperti berikut:

(1) Telah melaksanakan langkah-langkah tertentu untuk mendapatkan bahan letupan termasuk bom dan 'grenade launcher';

(2) Menggunakan 'molotov cocktail', 'ball bearing' serta berbagai-bagai senjata berbahaya untuk menyerang pihak keselamatan bagi menimbulkan keadaan huru-hara semasa demonstrasi jalanan di sekitar Kuala Lumpur pada bulan OKT 1998; dan

(3) Mendapatkan bantuan dan sokongan guru-guru silat serta mempengaruhi sebilangan bekas pegawai dan anggota keselamatan supaya menyertai gerakan mereka.

[The arrest and detention was carried out because of information as to their involvement in activities that are prejudicial to national security. The police need to conduct detailed investigations on the information received. The reform movement that began in September 1998 planned to topple the government through large scale demonstrations in the streets and were ready to undertake militant action by:

Taking specific steps to obtain explosives including bombs and grenade launchers;

Use of molotov cocktails, ball bearings and various dangerous weapons to attack security personnel to cause disorder or unruly disturbances during street demonstrations around Kuala Lumpur in October 1998;

Obtaining assistance and support of silat teachers, as well as influencing ex-security officers and personnel to participate in their movement.]

3. Bagi membendung trend militan gerakan reformasi tersebut maka pihak polis telah mengambil tindakan ke atas 28 orang aktivis reformasi di bawah Sek 73(1) AKDN 1960 antara 20 SEP 98 hingga 24 DIS 98. Tindakan-tindakan pihak polis tersebut telah dapat meredakan keadaan buat sementara waktu.

[To contain the militant trend of the reform movement, the police had taken action against 28 reform activists between 20th September 1998 and 2fourth December 1998. The said actions had succeeded to abate the situation for a temporary period.]

4. Pada pertengahan tahun 1999, aktivis gerakan reformasi muncul kembali dengan berselindung di sebalik platform sebuah parti politik di mana sebilangan daripada mereka telah menjalankan kegiatan-kegiatan yang boleh mewujudkan ketegangan kaum melalui isu-isu keagamaan dan perkauman. Ini termasuk penyebaran berita-berita palsu yang menggemparkan seperti dakwaan bahawa ramai orang Melayu telah dikristiankan semasa Pilihanraya Kecil Lunas. Ciri-ciri militan semasa

Pilihanraya Kecil itu telah juga dilakukan oleh aktivis reformasi melalui perbuatan ganas dengan mengancam, mengugut dan menakut-nakutkan para pengundi serta orang ramai.

[In mid-1999 reform movement activists re-emerged, hiding behind the platform of a political party where a number of them had conducted activities that can cause racial tensions with religious and racial issues, including dissemination of false reports that many Malays had been converted to Christianity during the Lunas By-Election. Features of militant action was also carried out during the By-Election by reform activists through violent actions by threats and frightening voters and the public.]

5. Pada akhir tahun 2000, aktivis reformasi telah membuat ketetapan untuk menggunakan dua pendekatan berikut bagi mencapai matlamat mereka:

(1) Akan terus melibatkan diri dalam proses demokrasi yang normal serta sistem pilihanraya; dan

(2) Melalui cara-cara di luar perlembagaan dengan mencetuskan demonstrasi jalanan secara besar-besaran dan bercorak militan menjelang Pilihanraya Umum 2004.

[At the end of year 2000, reform activists had decided to adopt two approaches to achieve their objectives:

To continue to be involved in normal democratic process and in the election system;

Through extra-constitutional means by promoting large scale militant demonstrations in the streets during General Elections 2004;]

6. Ke arah merealisasikan perancangan tersebut, satu kumpulan sulit yang dianggotai oleh lebih kurang 20 orang aktivis reformasi telah diwujudkan di Kuala Lumpur. Sejak 6 JAN 2001 hingga 4 APR 2001, sebanyak 12 perjumpaan sulit telah diadakan oleh kumpulan ini bagi merancang untuk mempengaruhi rakyat membudayakan demonstrasi jalanan dan perhimpunan haram secara militan. Antara perancangan terpenting gerakan reformasi dalam masa yang terdekat ini adalah untuk menganjurkan demonstrasi jalanan yang dipanggil 'Black 14' secara besar-besaran di Kuala Lumpur pada 14 APR 2001. Bagi mengelirukan pihak keselamatan, perhimpunan tersebut dipanggil 'Perhimpunan Penyerahan Memorandum Rakyat Mengenai Hak Asasi Manusia' di mana mereka merancang untuk mengumpulkan seramai lebih kurang 50,000 orang yang akan berhimpun di sekitar Kuala Lumpur. Perhimpunan serta perarakan ini berpotensi menjadi rusuhan.

[Towards realising that plan, a secret group of about 20 reform activists was formed in Kuala Lumpur. Since 6 Januari 2001 until 4 April 2001, 12 secret meetings had been held by this group to plan to influence citizens to adopt the culture of street demonstrations and militant racial gatherings. Among the most important preparations of the reform movement in the immediate period was to promote large scale street demonstrations in Kuala Lumpur called 'Black 14' on 14 April 2001. To confuse the security agencies, the said assembly was called 'Perhimpunan Penyerahan Memorandum Rakyat Mengenai Hak Asasi Manusia' where they plan to gather about 50,000 participants who will gather around Kuala Lumpur. Such gatherings and parades have the potential to become a riot.]

7. Adalah jelas aktivis reformasi sanggup melaksanakan kegiatan-kegiatan di luar perlembagaan dan undang-undang demi mencapai matlamat mereka. Oleh itu, tindakan di bawah Sek 73(1) AKDN 1960 diambil kerana pihak Polis mempercayai ada alasan-alasan untuk menahan mereka di bawah Sek 8 AKDN 1960 kerana telah bertindak dengan cara yang memudaratkan keselamatan negara.

[It is clear reform activists were willing to act unconstitutionally and unlawfully to achieve their ends. Therefore action was taken under section 73(1) of the ISA because the police believe there are reasons to arrest and detain the plaintiffs under section 8 for acting in a manner prejudicial to national security.]

OBSERVATIONS ON THE PRESS STATEMENT

[15] With the exception of para 1 which announced the arrests and detention, the first sentence of para 2 and second sentence of para 7, the bulk of the press statement described activities of reform activists that constituted acting in a manner prejudicial to 'national security', a term that in the context of Malaysia falls within the meaning of the term used in the ISA, 'security of Malaysia'.

[16] Paragraph 1 of the press statement, and similarly the arrests of the fifth and sixth plaintiffs clearly identified the plaintiffs. The first sentence of para 2 explained they were arrested and detained because there was information of their involvement in activities prejudicial to national security and the police need to conduct thorough investigations.

[17] Section 73 of the ISA provides:

73 Power to detain suspected persons

(1) Any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has reason to believe –

(a) that there are grounds which would justify his detention under section 8;

and

(b) that he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof.

[18] If it is true there was such information, then only would the arrest and detention pending inquiries be authorised under s 73(1).

[19] The press statement then went on to describe the activities of reform activists that began in September 1998 that constituted 'acting in a manner prejudicial to the security of Malaysia', the actions taken successfully to contain

them, the re-emergence of such activities in mid-1999, and the activities of the reform activists. Paragraph 7 began with concluding it was clear that reform activists were willing to act unconstitutionally and unlawfully to achieve their objectives. Then para 7 of the press statement concluded with the following:

> ... Oleh itu, tindakan di bawah Sek 73(1) AKDN 1960 diambil kerana pihak Polis mempercayai ada alasan-alasan untuk menahan mereka di bawah Sek 8 AKDN 1960 kerana telah bertindak dengan cara yang memudaratkan keselamatan negara.

[20] The last sentence above faithfully reflected the language of s 73(1).

[21] While s 73 empowers a police officer to arrest and detain any person pending inquiries, there is a requirement that the police officer must have reason to believe there are grounds which would justify detention of that person under s 8 and that the person had acted or was about to act or was likely to act in any manner prejudicial to the security of Malaysia. Read as a whole, the requirement that the police officer must have reason to believe means s 73(1) does not authorise the arrest and detention of anyone 'pending further inquiries' in order to make out a case against the person, but to verify the grounds upon which the police had reason to believe, the grounds which would justify the plaintiffs' detention under s 8, and that the person arrested and detained had acted or are about to act or are likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof.

[22] The press statement of the arrest and detention at a press conference therefore meant publication to all and sundry that the police had reason to believe that there were grounds which would justify the plaintiffs' detention under s 8 and that they had acted or was about to act or was likely to act in any manner 'prejudicial to the security of Malaysia ...'. Although the last sentence of the press statement faithfully reflected the language of s 73(1), it was not mere formality but was a specific statement that the defendants had reason to believe. The press statement unquestionably associated the plaintiffs with the activities of reform activists. It is the wrong kind of person, citizen or politician who regards involvement or accusation of involvement in activities prejudicial to national security as a badge of honour. For the rest of us, it is unquestionably prima facie defamatory if the association and accusation turns out not to be true.

[23] Having come to this conclusion, it is necessary to examine whether the defence of qualified privilege arises.

QUALIFIED PRIVILEGE

[24] In *Reynolds v Times Newspapers Ltd and others* [2001] 2 AC 127 (HL), Albert Reynolds, a former Irish Prime Minister was accused in the British press of deliberately misleading the Irish Parliament. Reynolds sued for defamation and the defendants pleaded, inter alia, qualified privilege. The House of Lords held that the defence of qualified privilege would be available in respect of political information when the defendant satisfied the old common law test, ie: 'where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it'. The public statement, including any press statement, in respect of the arrest and detention of the plaintiffs under the ISA pending further inquiries, is therefore necessarily protected by qualified privilege.

[25] An arrest and detention under the ISA, being without trial, is always a matter of public concern. A timely public statement by the authorities in explanation of such action, is very much in the public interest, to assure the public that the power to arrest and detain under it was not being abused. The public statement is in fact a detainee's best protection, being the publicisation of his plight into the public notice.

[26] In *Loutchansky v Times Newspapers Ltd and others (Nos 2-5)* [2001] EWCA Civ 1805; [2002] QB 783, it was explained by the English Court of Appeal that while the interest served was that of the public in a modern democracy in free expression and in a free and vigorous press, the corresponding duty upon the journalist was to discharge that function by behaving as a responsible journalist.

[27] The logic must equally follow from the elucidation in *Public Prosecutor v Ooi Kee Saik & Ors* and *Loutchansky v Times Newspapers Ltd and others (Nos 2-5)* that while police powers of arrest and detention pending inquiries is a necessity in cases affecting national security, there is a duty upon the police to act responsibly and not abuse the power. Likewise while qualified privilege is a defence, it is not an absolute defence and malice, as an abuse of that defence, negates it.

[28] Certainly, in our view, the exercise of the draconian powers to arrest and detain pending inquiries on the grounds the police have reason to believe there are grounds which would justify the plaintiffs' detention under s 8 and that they had acted or are about to act or are likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, calls for occasion to explain to the public the exercise of the power to reassure the public that the draconian

powers were not being abused, because it is only too easy and even perhaps tempting to label political opponents as a security threat and thus justifying their arrest and detention. There is thus a duty to explain so that the public is not only informed of such arrest but is also assured that the draconian powers were not abused. Such an occasion is unquestionably an occasion of privilege and statements made thereat for general publication calls for protection by qualified privilege.

[29] But it is equally unquestionable that if the occasion is abused, no defence of qualified privilege can be sustained even if an occasion for qualified privilege does arise to make a press statement.

[30] Cases such as *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147 (FC), *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789; [1997] 2 CLJ 11 (SC) and *Dato' Seri Syed Hamid bin Syed Jaafar Albar (Menteri Dalam Negeri) v SIS Forum (Malaysia)* [2012] 6 MLJ 340; [2012] 9 CLJ 297 (CA) have established that matters involving security and public order are not amenable to judicial review, and that disclosure of the information upon which the action was taken is undesirable.

[31] We bear in mind also the impeccable elucidation in *Public Prosecutor v Ooi Kee Saik & Ors* [1971] 2 MLJ 108 by Raja Azlan Shah J (as His Majesty then was) on the balance between the government's duty to preserve public peace and order, and therefore the right to legislate laws to do so, and the public right of lawful criticism of the government:

> The Government has a right to preserve public peace and order, and therefore, has a good right to prohibit the propagation of opinions which have a seditious tendency ... Therefore, a meaningful understanding of the right to freedom of speech under the Constitution must be based on the realities of our contemporary society in Malaysia by striking a balance of the individual interest against the general security or the general morals, or the existing political and cultural institutions ... The dividing line between lawful criticism of Government and sedition is this – if upon reading the impugned speech as a whole the court finds that it was intended to be a criticism of Government policy or administration with a view to obtain its change or reform, the speech is safe. But if the court comes to the conclusion that the speech used naturally, clearly and indubitably, has the tendency of stirring up hatred, contempt or disaffection against the Government then it is caught within the ban of paragraph (a) of s 3(1) of the Act ... To 'excite disaffection' in relation to a Government refers to the implanting or arousing or stimulating in the minds of people a feeling of antagonism, enmity and disloyalty tending to make government insecure.

[32] As to who should be the judge of what national security requires, Lord Parker delivering the opinion of the judicial committee in *The Zamora* [1916]

2 AC 77 at p 107 (PC), had this to say:

> Those who are responsible for national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be the subject of evidence in a court of law or otherwise discussed in public.

[33] In *Secretary of State for the Home Department v Rehman* [2001] 1 All ER 122 (HL), Lord Slynn in the House of Lords expressed the view that the threat need not be a direct threat to national security so that the executive is not hampered from assessing how to protect the interests of the state, which include 'not merely military defence but democracy', and 'the legal and constitutional systems of the state'. Lord Slynn found it self-evident that 'national courts must give great weight to the views of the executive on matters of national security', and it 'should not ordinarily interfere with a case in which it considers that the view of the Home Secretary is one which could reasonably be entertained'.

[34] Even though the police's assessment of what amounts to a threat to national security must be given latitude and weight, it does not mean it is not open to examination subsequently, otherwise the public has no protection from the police purporting to act in the name of national security when they are not. The powers cannot be abused or exercised arbitrarily with impunity. In *Council of Civil Service Unions and others v Minister for the Civil Service* [1984] 3 All ER 935 (HL), which discussed *The Zamora*, Lord Fraser of Tullybelton explained:

> The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the government and not for the courts; the government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based on grounds of national security.

[35] Hence, it is not that actions to protect national security cannot be challenged at all, but where it is successfully challenged, it must be answered. If it cannot answer, legal consequences may follow. It is the obvious counterpoise in the system of check and balance that while powers of arrest and detention in the interests of national security are necessary, and are unacceptable to or feared by only those who expect to engage in such activities, it is equally obvious it is a power that must be exercised responsibly and not abused. It follows therefore that merely maintaining that the provisions of s 73 had been followed and there was prior investigation by Bahagian Risikan is not a sufficient answer to a challenge to the assessment and decision.

[36] We recognise it may be difficult to successfully challenge the assessment

and decision, given the nature of the evidence and the confidential nature of investigations on threats to national security. Activities prejudicial to national security more often than not are conducted secretly. The nature of investigations may necessarily be confidential, where disclosure may endanger the sources and compromise the ability to investigate. A maximum 15 day remand under the Criminal Procedure Code means that arrest is authorised only when the better part of an investigation had been completed and evidence obtained before arrested is authorised. The two months maximum detention under s 73 of the ISA reflects recognition of the difficulty to gather evidence ultimately to satisfy the Minister under s 8 to make a detention order.

[37] Ironically, direct evidence to prove involvement in activities prejudicial to national security is as notoriously hard to come by, as it is to successfully challenge the government's assessment and decision as to threat to national security. But that is not to say it can never be proved, because total secrecy is not possible. If a person is arrested and detained, relatives, friends and associates will know he is missing. The person arrested and detained himself not only knows of his arrest and detention, but also how he is dealt with or treated while he is under arrest and detention. These may show whether the police officer acting under s 73 had reason to believe that there are grounds which would justify detention of that person under s 8 and that the person had acted or was about to act or was likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof. That person may be able to identify the persons having charge of him when arrested and detained, require their attendance as witnesses, and if necessary to call them and examine them as hostile witnesses.

[38] In this case, the evidence was unchallenged that the plaintiffs were not questioned or required to explain as to their activities purported to be prejudicial to the security of Malaysia. There was no explanation in evidence as to why they did not do so. Furthermore the defendant's witnesses DW1, DW2, DW3 and DW4 did not say, giving reasons, that they were not able to disclose the evidence they found, but on the contrary admitted they did not find anything to link the plaintiffs to the militant activities, and that the interrogations had nothing to do with national security.

[39] The press statement had asserted that the arrest and detention was made upon information obtained. That the information was obtained by the Bahagian Risikan and supplied to the first defendant is no defence that the first defendant can rely on to show lack of malice. The explanation provided by the press statement meant there was already some evidence before the plaintiffs were arrested and detained under s 73 for further inquiries. The admissions of DW1, DW2, DW3 and DW4 meant that the press statement, and:

(a) prepared before the press conference called for the purpose; and

(b) released to the press in the press conference by the first defendant, the highest ranking officer in the police force,

was incorrect and not true when it gave the inference there was some evidence against the plaintiffs of their activities prejudicial to the security of Malaysia when they were arrested and detained pending further inquiries. The press statement, issued to assure the public that s 73 of the ISA was not being abused, were in the circumstances made recklessly by the first defendant.

[40] We note that:

(a) the act of arrest and detention pending inquiries in respect of actions prejudicial to the security of Malaysia is authorised by the ISA; and

(b) the defendants relied upon the report of the Bahagian Risikan of the police force.

[41] It is trite that truth (justification) is a complete defence, but where a statement alleged to be defamatory is unable to be defended by a defendant as being true, then the defence of qualified privilege may be relied upon to provide a defence, if it is made upon an occasion as described in *Reynolds v Times Newspapers Ltd and others*, being communication on an occasion where it appears there is a duty to make a statement, and the persons to whom it was made had a corresponding interest to receive it.

[42] The defence of qualified privilege is relied upon primarily when one is unable to prove the truth of the statement, or when the statement made is untrue. The defence of qualified privilege is therefore a defence upon the basis that even though the statement made was unable to be proved as true, or is in fact untrue, it was made in good faith upon an occasion when there is a duty to make the statement to parties who have an interest to receive it. That good faith is negated, and the defence of qualified privilege with it, when the occasion is abused to make the statements that are defamatory. The law of defamation must strike a balance between the duty to make the press statement and protecting persons against untrue statements that harm them.

[43] Amongst the old cases the reading of which provide diversion to judges, are *Dawkins v Lord F Paulet* (1869) LR 5 QB 94 and *Bradford Corpn v Pickles* [1895] AC 587 (HL). In *Dawkins v Lord F Paulet*, a captain sued the major general commanding the brigade alleging libel in a report on the captain. It was held by a majority that even though there was malice and absence of any reasonable or probable cause, the majorgeneral was not liable. Cockburn CJ, dissenting, held the view that the major-general would lose his defence if the captain proves he lacked 'bona fides'. Mellor J considered that where a person is doing his duty, the question of malice was irrelevant:

> I apprehend that the motives under which a man acts in doing a duty which it is incumbent upon him to do, cannot make the doing of that duty actionable, however malicious they may be. I think that the law regards the doing of the duty and not the motives under which it is done. In short, it appears to me, that the proposition resulting from the admitted statements on this record amounts to this: Does an action lie against a man for maliciously doing his duty? I am of opinion that it does not.

[44] In *Bradford Corpn v Pickles*, the respondent diverted water so that it no longer flowed to his neighbour's property. The purpose appeared to be to force the neighbour to buy his property at a higher price. It was held that no one has a right to divert water flowing to their property, and therefore the diversion by P did not constitute a nuisance.

[45] On the face of it, these cases appear to lend support to the argument that the defendants having the responsibility to maintain security of Malaysia, and in using the ISA, had a duty to make the press statement to assure the public that the powers of arrest and detention pending inquiries was not being abused, cannot be held liable for defamation in a press statement issued in explanation, even if there was malice.

[46] However, the argument would not be in accord with the present day developments in judicial review where in the exercise of its supervisory jurisdiction, judicial scrutiny is directed to examination of whether the executive power was exercised without illegality, procedural impropriety or irrationality (see *Council of Civil Service Unions and others v Minister for the Civil Service*), meaning that the executive power must be exercised in good faith and not abused. The notion that that there could be no liability for the wrong or spiteful exercise of a right is inconsistent with these principles of judicial review. In *Horrocks v Lowe* [1975] AC 135 (HL), Lord Diplock had this to say:

> ... The public interest that the law should provide an effective means whereby a man can vindicate his reputation against calumny has nevertheless to be accommodated to the competing public interest in permitting men to communicate frankly and freely with one another about matters in respect of which the law recognises that they have a duty to perform or an interest to protect in doing so. What is published in good faith on matters of these kinds is published on a privileged occasion. It is not actionable even though it be defamatory and turns out to be untrue. With some exceptions which are irrelevant to the instant appeal, the privilege is not absolute but qualified. It is lost if the occasion which gives rise to it is misused. For in all cases of qualified privilege there is some special reason of public policy why the law accords immunity from suit – the existence of some public or private duty, whether legal or moral, on the part of the maker of the defamatory statement which justifies his communicating it or of some interest of his own which he is entitled to protect by doing so. If he uses the occasion for some other reason he loses the protection of the privilege.

[47] When the press statement was considered together with the admissions of DW1, DW2, DW3 and DW4 and the unexplained absence of evidence and questioning or confronting the plaintiffs as to their activities alleged to be prejudicial to the security of Malaysia, one was led to the conclusion that the press statement was made to justify the arrest and detention without there being evidence of the plaintiffs' activities that were prejudicial to the security of Malaysia which would have justified action under s 73 of the ISA for further enquiries. Strictly the press conference was not an occasion of qualified privilege, or even if the occasion were accepted as one of qualified privilege, the press statement, being, from the admissions of DW1, DW2, DW3 and DW4 to be without basis, was none other than reckless and without foundation, and the protection of qualified privilege was thereby lost.

[48] We would, therefore, dismiss the defendants' appeal on qualified privilege.

QUANTUM OF DAMAGES, DEFAMATION AND FALSE IMPRISONMENT

[49] The fifth plaintiff did not appeal against the finding of the High Court to exclude the fifth plaintiff and entering judgment in favour of the second, third, fourth and sixth plaintiffs only. The second, third, fourth and sixth plaintiffs appealed against the quantum of RM100,000 (RM60,000 general damages and RM40,000 aggravated and exemplary damages) awarded by the High Court.

[50] The defendants appealed against the award of damages in respect of false imprisonment at RM15,000 per day.

[51] We accept the submission that in defamation cases, general damages are essentially the compensation order by the court for damage done to the plaintiff's reputation.

[52] In giving the circumstances and the submissions our anxious consideration, we appreciated an important distinction. This case is not a defamation action against another private person or company. It is against public officers with a public duty and responsibility to act to protect national security and to make the press statement, and the Government being held vicariously liable for their actions. With duty and responsibility of government on one side and the persons arrested and detained and press statement made in respect of them and their arrest and detention on the other, what is a public officer to do when he is cast by such persons into the role of an opponent, challenged, castigated, accused and condemned, and their very act condemned if not for one reason, then another. It is a predicament that leaves the officer

with nowhere to turn and no one to rightly trust. In the absence of evidence of actual malice on the part of the first defendant, we conclude the recklessness in this case was a mistake made in difficult circumstances, resulting from public officers succumbing to using the powers when it is not justified.

[53] As much as we appreciate the injury suffered by the plaintiffs, it must be balanced against the interests of the State and the nation, and that includes all of its citizens, for whose interests the plaintiffs no doubt would be happy to represent. If the plaintiffs' purpose is to act, to take risks and make sacrifices if necessary for the people, it would be odd that the citizens indirectly to have to now pay the plaintiffs' substantial damages for the defamation. We think that more often than not in such circumstances, the sacrifices, where warranted, and the vindication of a judgment are more valuable than any purely monetary award.

[54] We were, therefore, not persuaded that there has been such an error to warrant appellate intervention in the exercise of discretion by the trial judge in the award as to damages for defamation. Accordingly, we dismissed the appeal by the second, third, fourth and sixth plaintiffs on the quantum of damages for defamation.

[55] Since the defendants' appeal is confined to quantum of damages for false imprisonment, it is unnecessary:

(a) to address the questions of res judicata in this case based upon the decision of the Federal Court in *Mohamad Ezam bin Mohd Noor v Ketua Polis Negara & Other Appeals* [2002] 4 MLJ 449; [2002] 4 CLJ 309 (FC). Mohamad Ezam Mohd Noor not being a party in this case, res judicata does not arise as the parties are not the same; or

(b) to address the question of whether there was unlawful arrest and detention or not.

[56] The High Court dealt with the issue of damages for unlawful arrest and false imprisonment between paras 36 and 39 of the grounds of judgment. The High Court had awarded RM15,000 per day.

[57] The senior federal counsel referred to the decision of this court in:

(a) *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah* [2014] 7 CLJ 533 (CA); and

(b) *Thompson v Metropolitan Police Comr* [1998] QB 498.

[58] In *McGregor on Damages*, it was observed by the learned commentator that:

> The details on how damages are worked out in false imprisonment are few: generally it is not pecuniary loss but a loss of dignity and the like and is left much to the jury's and judge's discretion. The principal heads of claim would appear to be the injury to liberty, ie, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, ie, the indignity, mental suffering, disgrace and humiliation with any attendant loss of social status and injury to reputation ... In addition there may be recovery for any resultant physical injury, illness or discomfort ... further any pecuniary loss which is not too remote is recoverable; there appears to be no modern reported cases ... that any loss of general business or employment is recoverable would seem to follow from *Childs v Lewis* ...

[59] The point made in *McGregor* is that the principle of damages for false imprisonment is not pecuniary loss but for the loss of dignity by the false arrest and imprisonment, but pecuniary loss can be recovered provided it is pleaded and not too remote.

[60] The claim in this case is predicated upon false imprisonment only, and as in *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah*, we hold that the pleadings nor the evidence adduced do not provide support for a claim for pecuniary loss.

[61] Case-law in respect of damages for false imprisonment, was reviewed in *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah*. The award of RM3m pegged at the rate of RM20,000 per day and discounted at 50% was reduced to an award of RM300,000, effectively amounting to RM1,000 per day.

[62] This court in *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah* has stated that the total amount for longer periods is not a case of simple arithmetical progression, but that that damages awarded must be 'sufficient' since it will be in the public interest to award more than nominal damages 'in order to give reality to the protection afforded by law to personal freedom'. This is because the fact remains that the false imprisonment remains one and the same. False imprisonment is not a separate wrong each determined upon a daily, weekly or monthly basis. Nor is it upon an hourly or minute by minute basis. Nevertheless it is unarguable that although the severity of false imprisonment is not necessarily upon an arithmetical progression, the longer the false imprisonment the more severe is the tort. In our view, the circumstances is always relevant including the reasons given for the arrest and detention, whether efforts made to seek release was actively resisted. If a person did not seek release, but was happy to remain in detention albeit unlawfully, he cannot be said to have suffered much loss of dignity and he should not use the occasion for lucrative income by claiming damages. Ultimately the damages is for what is pleaded, the evidence adduced in respect thereof, and only for damages that

is reasonably foreseeable and reasonable.

[63] In *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah*, personal freedom was curtailed for acting:

> ... dengan sedar dan rela hati telah melibatkan diri dalam kegiatan-kegiatan memalsukan dokumen-dokumen perjalanan Malaysia serta menguruskan penghantaran rakyat warganegara asing berhijrah ke negara ketiga daripada Malaysia dengan menggunakan dokumen-dokumen yang telah dipalsukan oleh kamu di mana dengan kegiatan kamu ini boleh memudaratkan keselamatan Malaysia.

[64] That case involved 32 fake visas and successfully organising the departure of about 175 persons who had overstayed in Malaysia.

[65] From the press statement, the instant case involved not persons in criminal activities for personal gain, but persons in political activities whom the police stated it 'had reason to believe' was involved in activities prejudicial to the security of Malaysia but at the trial, neither evidence for such reason to believe was produced nor reasons for the failure to do so was presented in the trial, leading to the conclusion there was no basis for the arrest and detention, and that the plaintiffs were arrested for their political activities. Such arrest and detention strikes at the very heart of a democracy, and in our view, is a much more serious assault on personal liberty and with very much less justification for arrest and detention. The Constitution expects of the police a fair, objective and independent approach in respect of political activities, as it is the key to a functioning democratic system. The police must be seen to be fair, objective and independent. Only when respected as being fair, objective and independent can it be effective in serving its function within the law. For this reason a sufficient award in this case must be substantially more than in a case such as *Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v Badrul Zaman PS Md Zakariah*. A sum ranging between RM400,000 and RM550,000 would be appropriate.

[66] We would, therefore, allow the appeal on damages for false imprisonment in part to reduce the award of general damages to RM10,000 per day.

[67] We conclude with the observation that the fundamental Constitutional principle is that the rights and liberties of persons and powers of the institutions of the State are balanced against each other in the interests of the security of Malaysia or any part thereof, the maintenance of essential services therein and the economic life thereof. No right, liberty or power is absolute. Acceptance and adherence to the principle is essential to the functioning of the Constitution.

[68] Accordingly we:

(a) dismissed the appeal by the defendants on the defence of qualified privilege for defamation;

(b) dismissed the appeal by the plaintiffs on quantum of damages for defamation;

(c) allow the appeal on quantum of damages for false imprisonment by reducing the sum from RM15,000 to RM10,000 per day; and

(d) ordered each party to bear their own costs.

Both appellants' appeal against liability for defamation and respondents' appeal against quantum of damages awarded for defamation dismissed and damages awarded for false imprisonment reduced to RM10,000 per day.

Reported by Ashok Kumar